



## Senate

General Assembly

**File No. 330**

*January Session, 2015*

Substitute Senate Bill No. 106

*Senate, March 31, 2015*

The Committee on Labor and Public Employees reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS AND DAMAGES FOR AN EMPLOYER'S FAILURE TO PAY WAGES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1      Section 1. (NEW) (*Effective October 1, 2015*) (a) As used in this  
2      section:

3      (1) "Employee" means any individual engaged in service to an  
4      employer in a business of his employer;

5      (2) "Employer" means an individual engaged in business who has  
6      employees, including the state and any political subdivision thereof;  
7      and

8      (3) "Unfair immigration-related practice" means any discriminatory  
9      practice directed at an employee who has immigrated to this country,  
10     including, but not limited to:

11 (A) Requesting that the employee provide additional or different  
12 documents than are required under Section 1324a(b) of Title 8 of the  
13 United States Code, or refusing to accept documents provided by the  
14 employee pursuant to said section that reasonably appear to be  
15 genuine;

16 (B) Checking or threatening to check the employment authorization  
17 status of an employee at a time or in a manner not required under  
18 Section 1324a(b) of Title 8 of the United States Code;

19 (C) Filing or threatening to file a false police report against an  
20 employee; and

21 (D) Contacting or threatening to contact immigration authorities to  
22 report an employee.

23 (b) No employer shall engage in any unfair immigration-related  
24 practice against an employee for the purpose of retaliating against  
25 such employee for exercising any right afforded to him or her  
26 pursuant to the provisions of chapters 557 to 559, inclusive, 561, 563a,  
27 566a, 567, 568 or 571 of title 31 of the general statutes, including, but  
28 not be limited to:

29 (1) Filing a complaint or informing any individual of an employer's  
30 alleged violation of any provision of said chapters, provided such  
31 complaint or disclosure was made in good faith;

32 (2) Seeking information regarding whether an employer is in  
33 compliance with any provision of said chapters; and

34 (3) Informing an individual of his or her potential rights and  
35 remedies under any provision of said chapters, or assisting such  
36 individual in asserting his or her rights or seeking remedies under any  
37 provision of said chapters.

38 (c) Nothing in this section shall be construed to prevent an  
39 employer from complying with the requirements of state or federal  
40 statutes, rules or regulations, case law or rules of self-regulatory

41 organizations as defined in section 36b-3 of the general statutes.

42 (d) Engaging in an unfair immigration-related practice against an  
43 employee within ninety days after the employee exercises any right  
44 afforded to him or her pursuant to the provisions of chapters 557 to  
45 559, inclusive, 561, 563a, 566a, 567, 568 or 571 of title 31 of the general  
46 statutes shall create a rebuttable presumption of having done so in  
47 retaliation for the exercise of those rights.

48 (e) Any employee may file a complaint with the Labor  
49 Commissioner alleging violation of subsection (b) of this section, not  
50 later than one hundred eighty days after such violation occurs. Upon  
51 receipt of such complaint the commissioner shall investigate such  
52 complaint and may hold a hearing in accordance with the provisions  
53 of chapter 54 of the general statutes. After the hearing, the  
54 commissioner shall send each party a written copy of his or her  
55 decision.

56 (f) If the commissioner finds an employer has violated subsection  
57 (b) of this section, the commissioner may (1) levy against the employer  
58 a civil penalty of up to five hundred dollars for the first violation and  
59 one thousand dollars for each subsequent violation, (2) suspend the  
60 license of such employer to transact such business in this state for a  
61 period of not more than thirty days for a first violation and not more  
62 than ninety days for each subsequent violation, and (3) award an  
63 employee aggrieved by such violation all appropriate relief including  
64 rehiring or reinstatement to his or her previous job, payment of back  
65 wages, reestablishment of employee benefits or any other remedies the  
66 commissioner may deem appropriate.

67 (g) Any party aggrieved by the commissioner's decision under  
68 subsection (f) of this section may appeal the decision to the Superior  
69 Court in accordance with the provisions of chapter 54 of the general  
70 statutes.

71 Sec. 2. Section 31-68 of the general statutes is repealed and the  
72 following is substituted in lieu thereof (*Effective October 1, 2015*):

73 (a) If any employee is paid by his or her employer less than the  
74 minimum fair wage or overtime wage to which he or she is entitled  
75 under sections 31-58, 31-59 and 31-60 or by virtue of a minimum fair  
76 wage order he [may] or she shall recover, in a civil action, (1) twice the  
77 full amount of such minimum wage or overtime wage less any amount  
78 actually paid to him or her by the employer, with costs and such  
79 reasonable attorney's fees as may be allowed by the court, [and any] or  
80 (2) if the employer establishes that the employer had a good faith belief  
81 that the underpayment of such wages was in compliance with the law,  
82 the full amount of such minimum wage or overtime wage less any  
83 amount actually paid to him or her by the employer, with costs and  
84 such reasonable attorney's fees as may be allowed by the court. Any  
85 agreement between [him] an employee and his or her employer to  
86 work for less than such minimum fair wage or overtime wage shall be  
87 no defense to such action. The commissioner may collect the full  
88 amount of unpaid minimum fair wages or unpaid overtime wages to  
89 which an employee is entitled under said sections or order, as well as  
90 interest calculated in accordance with the provisions of section 31-265  
91 from the date the wages should have been received, had they been  
92 paid in a timely manner. In addition, the commissioner may bring any  
93 legal action necessary to recover twice the full amount of the unpaid  
94 minimum fair wages or unpaid overtime wages to which the employee  
95 is entitled under said sections or under an order, and the employer  
96 shall be required to pay the costs and such reasonable attorney's fees as  
97 may be allowed by the court. The commissioner shall distribute any  
98 wages or interest collected pursuant to this section to the employee or  
99 in accordance with the provisions of subsection (b) of this section.

100 (b) All wages collected by the commissioner for an employee whose  
101 whereabouts are unknown to the commissioner shall be held by the  
102 commissioner for three months and thereafter the commissioner may,  
103 in his discretion, pay the same, on application, to the husband or wife  
104 or, if none, to the next of kin of such employee. As a condition of such  
105 payment, the commissioner or his authorized representative shall  
106 require proof of the relationship of the claimant and the execution of a  
107 bond of indemnity and a receipt for such payment. Notwithstanding

108 the provisions of section 3-60b, any such wages held by the  
109 commissioner for two years without being claimed shall escheat to the  
110 state, subject to the provisions of sections 3-66a to 3-71a, inclusive.

111 Sec. 3. Section 31-72 of the general statutes is repealed and the  
112 following is substituted in lieu thereof (*Effective October 1, 2015*):

113 When any employer fails to pay an employee wages in accordance  
114 with the provisions of sections 31-71a to 31-71i, inclusive, or fails to  
115 compensate an employee in accordance with section 31-76k or where  
116 an employee or a labor organization representing an employee  
117 institutes an action to enforce an arbitration award which requires an  
118 employer to make an employee whole or to make payments to an  
119 employee welfare fund, such employee or labor organization [may]  
120 shall recover, in a civil action, (1) twice the full amount of such wages,  
121 with costs and such reasonable attorney's fees as may be allowed by  
122 the court, [and any] or (2) if the employer establishes that the employer  
123 had a good faith belief that the underpayment of wages was in  
124 compliance with law, the full amount of such wages or compensation,  
125 with costs and such reasonable attorney's fees as may be allowed by  
126 the court. Any agreement between [him] an employee and his or her  
127 employer for payment of wages other than as specified in said sections  
128 shall be no defense to such action. The Labor Commissioner may  
129 collect the full amount of any such unpaid wages, payments due to an  
130 employee welfare fund or such arbitration award, as well as interest  
131 calculated in accordance with the provisions of section 31-265 from the  
132 date the wages or payment should have been received, had payment  
133 been made in a timely manner. In addition, the Labor Commissioner  
134 may bring any legal action necessary to recover twice the full amount  
135 of unpaid wages, payments due to an employee welfare fund or  
136 arbitration award, and the employer shall be required to pay the costs  
137 and such reasonable attorney's fees as may be allowed by the court.  
138 The commissioner shall distribute any wages, arbitration awards or  
139 payments due to an employee welfare fund collected pursuant to this  
140 section to the appropriate person.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	31-68
Sec. 3	<i>October 1, 2015</i>	31-72

***Statement of Legislative Commissioners:***

The title was changed for accuracy.

**LAB**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Labor Dept.	GF - Potential Revenue Gain	Up to 28,125	Up to 75,000

Note: GF=General Fund

### **Municipal Impact:** None

### **Explanation**

The bill prohibits employers from retaliating against immigrant employees, and establishes civil penalties of up to \$500 for initial violations and up to \$1,000 for each subsequent violation. This results in a potential revenue gain of up to \$28,125 in FY 16 and up to \$75,000 annually thereafter.

The bill also requires, rather than allows, a court to award double damages for certain wage violations, which does not result in any fiscal impact to the state or municipalities.

The bill allows an employee to file a complaint with the Labor Commissioner, and requires the Department of Labor (DOL) to investigate any complaint. It allows DOL to levy a penalty of up to \$500 for initial violations and \$1,000 for subsequent violations. It is anticipated that there will be fewer than 75 violations annually, resulting in a revenue gain of up to \$28,125 in FY 16 and up to \$75,000 annually thereafter.

There is no impact to the Judicial Department from allowing any aggrieved party to appeal to the Superior Court. The number of appeals is not anticipated to be great enough to need additional resources. The court system disposes of over 400,000 cases annually.

***The Out Years***

The annualized ongoing fiscal impact identified above would remain constant into the future as penalty amounts are set by statute and are not subject to inflation.

*Sources: Department of Labor Wage and Workplace Standards Division*



**OLR Bill Analysis****SB 106*****AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS AND DAMAGES FOR AN EMPLOYER'S FAILURE TO PAY WAGES.*****SUMMARY:**

This bill prohibits employers, including the state and municipalities, from taking certain actions to retaliate against immigrant employees for exercising their rights under various state labor laws. Its prohibited “unfair immigration-related practices” include any discriminatory practice directed at an immigrant employee, including (1) checking or threatening to check whether the employee can legally work in the country at a time or in a way not required by federal law or (2) contacting or threatening to contact immigration authorities to report an employee. It also allows employees to complain about violations to the labor commissioner, who can impose up to a \$500 fine for initial violations and up to a \$1,000 fine for subsequent violations.

But the bill specifies that its provisions do not prevent an employer from complying with state or federal laws or regulations or the rules of self-regulatory organizations (e.g., businesses regulated by the Securities and Exchange Commission).

The bill also requires a court to award twice the amount owed, plus court costs and attorney's fees, if it finds that an employer failed to (1) pay an employee's wages, benefits, or arbitration award or (2) meet the law's minimum wage or overtime rate requirements. Current law gives the court discretion to award up to twice the amount owed in these cases. The bill's award requirement does not apply to employers who establish a good-faith belief that their underpayments were legal. Such employers must, however, pay the full amount owed, plus court costs and attorney's fees. Existing law also allows the labor commissioner to

collect unpaid wages and payments or bring a civil suit on the employee's behalf.

EFFECTIVE DATE: October 1, 2015

### **UNFAIR IMMIGRATION-RELATED PRACTICES**

Under the bill, an “unfair immigration-related practice” is any discriminatory practice directed at an employee who has immigrated to this country, including:

1. asking the employee to provide documents other than those that must be provided under the federal law on the unlawful employment of aliens, or refusing to accept documents that reasonably appear genuine;
2. checking or threatening to check an employee’s employment authorization at a time or in a way not required by the federal law on the unlawful employment of aliens;
3. contacting or threatening to contact immigration authorities to report an employee; or
4. filing or threatening to file a false police report against an employee.

(Presumably, an employer must know or believe that an employee is an immigrant before taking any of the first three prohibited actions above. However, it is unclear if this prior knowledge would be necessary to make the employer’s filing or threatening to file a false police report an unfair immigration-related practice.)

### ***Retaliation***

The bill prohibits employers from using unfair immigration-related practices to retaliate against an employee for exercising any of his or her rights provided under the state’s laws on employment regulation, wages, labor organizations, labor relations, personnel files, professional employer organizations (e.g., a business that co-employs a client’s employees to provide human resources services),

unemployment compensation, workers' compensation, or workplace safety. An exercise of these rights can include:

1. filing a complaint or telling anyone, in good faith, about an employer's alleged violation of the above labor laws;
2. seeking information on whether an employer is in compliance with these laws; or
3. telling someone about his or her potential rights and remedies under these laws or helping someone assert these rights or seek these remedies.

The bill establishes a rebuttable presumption that an employer who engages in unfair immigration-related practices within 90 days after an employee exercises his or her rights under the specified labor laws is taking a retaliatory action (i.e., the employer will have to prove that the action was not retaliatory).

### ***Enforcement***

The bill allows employees to file a complaint with the labor commissioner within 180 days of the employer's alleged retaliatory action. The commissioner must investigate and may hold a hearing, after which she must send the parties a written copy of her decision. If she finds violations, the commissioner may (1) impose civil fines of up to \$500 for initial violations and \$1,000 for each subsequent violation; (2) suspend an employer's license to do business in the state for up to 30 days for an initial violation and up to 90 days for each subsequent violation; and (3) award an employee appropriate relief, including rehiring or reinstatement, back pay, reestablishment of benefits, and any other appropriate remedies. (It is unclear if the labor commissioner has the authority to suspend licenses she did not issue.) An aggrieved party may appeal the commissioner's decision to the Superior Court.

## **BACKGROUND**

### ***Related Bill***

SB 914, reported favorably by the Labor Committee requires, rather

than allows, a court to award twice the amount owed if it finds that an employer failed to (1) pay an employee's wages, benefits, or arbitration award or (2) meet the law's requirements for an employee's minimum wage or overtime rates.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea    13    Nay   0    (03/12/2015)